THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

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WRIT PETITION No.10554 of 1997

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Date: 05.01.2007

Between:

M.Tayaramma and others

… Petitioners

and

The Revenue Divisional Officer,
Amalapuram, East Godavari District,
and others

… Respondents

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

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WRIT PETITION No.10554 of 1997

O R D E R:

This writ petition has been instituted to declare the action of respondents 1 and 2 in contemplating to evict the petitioners from the land of an extent of Ac.1-17 cents situate in Survey No.205/1, Veeravallipalem Village of Inavilli Mandal, East Godavari District, as illegal.

The writ petitioners contend that their predecessor in interest and the third respondent in the writ petition are holding a common and joint title over the land in question and that the land has not been owned exclusively by the third respondent. The third respondent appears to have filed necessary declaration under Section 8 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Land Holdings) Act, 1973 on 03.01.1992 disclosing that land of an extent of Ac.12-20 cents was exclusively owned by him, whereas, in the land of an extent of Ac.14.44 cents, he holds only an undivided 1/3rd share thereof. In the declaration, he has specifically disclosed that in the land situate in Survey No.205-1 of Veeravallipalem Village of an extent of Ac.2-90, he is entitled only for an undivided 1/3rd share. Ultimately, the Special Officer has determined the third respondent as holding 0.0432 Standard Holdings of land in excess of the limit prescribed under the

aforementioned Act. This extent is equivalent to Ac.1-17 cents. That is the reason for the respondents 1 and 2 to have initiated action for taking possession of Ac.1.17 cents of land situate in Survey No.205-1 of Veeravallipalem Village from the petitioners. The petitioners have raised objection for respondents 1 and 2 in accepting surrender of such an encumbered property, inasmuch as the exclusive right of the third respondent over the land of an extent of Ac.1.17 cents out of the total land available in the said survey number is not yet determined or firmed up. Therefore, in the absence of any such determined right, the third respondent could not have attempted to surrender the said land and respondents 1 and 2 could not have accepted such surrender either.

It is a settled principle of law that such extent of the land, which has been determined as held in excess of the ceiling limit, is required to be surrendered freehold and no encumbrance can be created. There cannot be any third party interest subsisting in any such land at the time of surrender. Therefore, the State authorities are liable to accept the surrender of freehold land only. Since the third respondent has not surrendered freehold land and proposed to surrender an undivided 1/3rd share of the land in question, the same cannot be accepted. The legal representatives of the third respondent who have been impleaded as respondents 4 to 7 are now representing his estate. Therefore, respondents 1 and 2 are free to accept surrender of freehold land over an extent of Ac.1-17 cents from respondents 4 to 7. But, however, they shall not proceed against the land owned or possessed by the petitioners, inasmuch as they have nothing to do with the determination of excess land held by the third respondent.

In this view of the matter, the writ petition is allowed with a direction to respondents 1 and 2 to recover or obtain possession of

freehold land of an extent of Ac.1-17 cents which is equivalent to 0.0432 Standard Holdings from the estate of the third respondent, which is represented by respondents 4 to 7 in this writ petition and in such an event, they shall not proceed to evict the writ petitioners from the land in question. No costs.

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(NOOTY RAMAMOHANA RAO, J)

5th JANUARY, 2007.

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